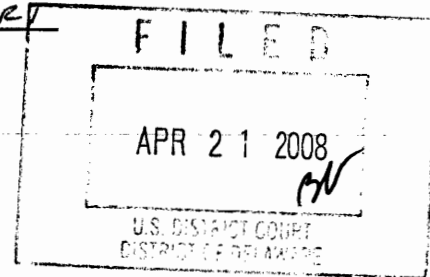


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE



GLEN W. DUCOTE,  
Petitioner,

v.

PERRY PHELPS, WARDEN;  
JOSEPH R. BIDEN III Attorney  
General for State of Delaware

Civ. A. No. 07-374-GMS

Respondants.

MOTION TO AMEND PETITION TO ADD GROUND 8 AND 9.

Petitioner moves this Court pursuant to Habeas Rules 5 and 11 of F.R.C.P. Rules 11 and 15(a) and (c), to permit him to amend his previous filed Habeas Corpus Petition to add clarification and amplification to Petitioner's Petition Ground 5 and 6 claims of Ineffective Assistance of Counsel. See: United States v Thomas 221 F.3d 430 (3rd Cir. 2000); Stevens v. Del. Corr. Ctr. 295 F.3d 361, 370 (3rd Cir. 2002) (Claims clarified in Federal Court related to facts submitted in state courts) This Amendment seeks to amplify or clarify the central issue of the Petition and related back to those facts.

Ground 8: Counsel ineffective for failing to investigate the medical evidence and also procure an independent medical expert to rebutt State's medical examiner's opinion that Petitioner had the requisite state of mind of intent based on the injuries inflicted when the most severe injuries were not from the initial assault but from an incident that occurred on the highway. (Having done

would have permitted the jury to access Petitioner's guilt of Assault Second Degree, 11 Del. C. § 612(a)(1)(2): "The person [] intentionally causes serious physical injury to another person; or The person [] intentionally causes physical injury to another by means of a deadly weapon..."")

GROUND 9: "Allowable evidence insufficient to establish guilt beyond a reasonable doubt to the "causation" element and/or "intent" element of intentional first degree murder to support Petitioner's conviction under 11 Del C § 636(a)(1), when injury inflictions causation was not segregated from automobile injuries that are not relevant to petitioner circumstances as he believed them to be at the specific time of alleged intent under 11 Del C § 531."

These issues facts were "passed over" by counsel and Court during appellate review. Tollet v. Henderson 411 US 258, 266-67 (1973) (Counsel's failure to properly evaluate facts); Flamer v. Chaffinch 827 F. Supp. , 1100 (D. Del. ) (State highest Court need only have sufficient facts in the record) These grounds issues relate directly to Petitioner's grounds 5 and 6.

FACTUAL SUPPORT FOR THESE CLAIMS; See. T.Tr. of Jan. 14, 2004. Testimony of expert witness Pakesh Patel M.D. pgs. 82-107; and, Theresa Bare pgs. 108-172. First, Dr. Patel made no distinction between the specific damage caused only by the stab wounds, and those injuries being ran completely over by a large commercial van which injuries were not legally part of the States case on intent. This doctors opinion was not challenged via adversarially by an independent expert defense witness to rebutt both "causation"

and the probable location of stab wounds that were in fact stab wounds and the absence of major organ damage likely to cause death from only those stab wounds in isolation. This evidence "under the circumstances" Petitioner believed them to be would have shown lack of ~~specific~~ specific intent to kill, based on criminal standard of proof beyond a reasonable doubt.

Testimony of victim Bare pgs 168-172. Specifically the following:  
~~pg. 129~~: The point Petitioner emphasizes is there is no testimony where Petitioner actually verbalized "I AM going to kill you". The phrases used by victim are "paraphrases" of victim's thoughts what she thought "Petitioner was going to do - NOT what Petitioner actually said."

See e.g.: pg. 29: "today is the day you are going to die if you get up";  
 pgs 130-131: No specific verbalized specific intent to kill, it is conditioned on "if" victim didn't do Petitioner's request.; pgs. 131-133: victim testifies being stabbed in stomach (not in chest or throat cut) and Petitioner let her go to the kitchen; pg. 134: again conditioned on "if";  
 pgs. 134-138: The phrases "he kept telling me he was going to kill me" are "paraphrases" of this victim because "[she] knew" the "same way he was doing me."; pgs. 140-141: Again this is what the victim thought, NOT Petitioner. It is what was in the mind of the Petitioner that is at issue; i.e. "The same way I ~~felt~~ had felt, I am going to die".  
See also: pgs 153-160 (Cross-examination on specific lack of specific intent to kill under the circumstances, Petitioner believed them to be)

Because the injuries played a significant factor in this trial, the Constitution requires that the State provide access to an expert

witness assistance and that Court appointed defense counsel meet with an adversarial challenge to the issue of "causation" as an element relied on by the State in its case-in-chief, at a particular time during an offense when it is seriously a question of fact. Particularly when no testimony was offered about Petitioner's mental state at the time of this specific offense under title 11 Del. C § 531 and 11 Del. C § 636 (a)(1). Petitioner did not have a fair opportunity to present an adequate defense. AKE v OKLAHOMA 470 US 68 (1985). There was no ~~tactical~~ <sup>tactical</sup> advantage in not investigating the medical evidence or hiring a professional to clarify which injuries were caused by the stabbing. See: State Closing Tr. Jan. 15, 2008 pg. 20 "after you discuss kidnapping charge with the question of intent to kill." At the specific time during which the alleged specific conscious object or purpose to specifically intentionally kill victim had occurred. Particularly, there was never evidence that Petitioner made a statement "I am going to kill you!". Logically a threat based on a condition does not logically fall under "the circumstances [Petitioner] believed them to be [that] constitute[s] a 'substantial' step in the course of conduct 'planned' to culminate the commission of [specific intention] murder in the First Degree..." thus does not meet the requisite standard of intent beyond a reasonable doubt particularly ~~with~~ when combined with the lack of "causation" element. These issues relate to the facts raised in the Appeals in State Court. Wherefore, Petitioner respectfully prays this Court grant him leave to amend Petition by adding grounds 8 and 9.

Respectfully Submitted,

Glen Dulote - Petitioner



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PERRY PHELPS, Warden;

JOSEPH R. BIDEN III

Attorney General for State  
of Delaware.

Respondants.

Civ. A. No. 07-374-GMS.

ORDER

The Petitioner's Motion to Amend Petition to Add Grounds 8  
and 9 has been read and considered.

IT IS ORDERED that this Motion to Amend is Granted  
this \_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
United States District Judge

**Certificate of Service**

I, Greg W. Duran, hereby certify that I have served a true

and correct cop(ies) of the attached: Motion to Admire!

Ground 8 & 9.

upon the following

parties/person (s):

TO: US District Court

Lock Box 18.

2 Caleb Begg

Federal Building

Wilmington Del 19801

TO: \_\_\_\_\_

TO: \_\_\_\_\_

TO: Mr. Keepp / Aaron /

844 King Street

Wilmington Del 19801

**BY PLACING SAME IN A SEALED ENVELOPE** and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008

IM Spencer, D. J.  
SBI# 210611 UNIT 22  
DELAWARE CORRECTIONAL CENTER  
1181 PADDOCK ROAD  
SMYRNA, DELAWARE 19977

WILMINGTON DE 197  
18 APR 2008 PM 3 L



U.S. District Court  
Loc box 18 Boggs Federal  
Building 844 King Street  
Wilmington Delaware  
19801

Inmate Log # 1002315

